

0178  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded  
JUN 9 1971 -9 22 AM  
INTERSTATE COMMERCE COMMISSION

ADDITIONAL CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1971

between

ALLEN R. BRADLEY AND JOHN A. ZERBE

and

NORFOLK AND WESTERN RAILWAY COMPANY

---

ADDITIONAL AGREEMENT AND ASSIGNMENT

Dated as of June 1, 1971

between

ALLEN R. BRADLEY AND JOHN A. ZERBE

and

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY,  
as Agent

SCHEDULE A

ALLEN R. BRADLEY AND JOHN A. ZERBE

- Item 1: Allen R. Bradley and John A. Zerbe, who, as Owners, are parties with the Railroad, as Builder, to an Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for said Owners and as their property, the railroad equipment described in Schedule B hereto.
- Item 2: Deferred Purchase Price: \$65,147.
- Item 3: Allen R. Bradley, 1323 Bradford Road, Oreland, Pennsylvania 19075, and John A. Zerbe, 247 Buckboard Road, Willow Grove, Pennsylvania 19090.

ADDITIONAL CONDITIONAL SALE AGREEMENT dated as of June 1, 1971, between the two individual residents of the Commonwealth of Pennsylvania named in Item 1 of Schedule A hereto (hereinafter collectively called the Vendor or Manufacturer as more particularly set forth in Article 26 hereof), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer and the Railroad are parties to a conditional sale agreement dated as of September 1, 1970 (hereinafter called the Original Conditional Sale Agreement), providing for construction and the sale and delivery by the Manufacturer to the Railroad, and the purchase by the Railroad from the Manufacturer, of the railroad equipment described in Schedule B thereof (hereinafter called the Delivered Equipment);

WHEREAS, the Manufacturer and The First Pennsylvania Banking and Trust Company, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors named in Schedule A to the agency agreement (hereinafter called the Agency Agreement) dated as of September 1, 1970, among said investors, the Agent and the Railroad, are parties to an agreement and assignment dated as of September 1, 1970, pursuant to

which the Manufacturer assigned to the Agent certain rights under the Original Conditional Sale Agreement and its right, title and interest in and to the Delivered Equipment;

WHEREAS, the Original Conditional Sale Agreement and said agreement and assignment were filed with the Interstate Commerce Commission as a single instrument on September 10, 1970, under recordation number 5823, were deposited with the Registrar General of Canada with publication of notice of such deposit being made in accordance with Canadian law, and were filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada;

WHEREAS, pursuant to Section 2 of Article 3 of the Agency Agreement, the Railroad may acquire from a person or persons other than the Railroad, pursuant to an additional conditional sale agreement substantially similar to the Original Conditional Sale Agreement, additional units of railroad equipment upon the terms and conditions therein set forth; and

WHEREAS, the Manufacturer and the Railroad desire to enter into an additional conditional sale agreement to provide for the acquisition of such additional railroad equipment and in accordance therewith, the Manufacturer has agreed to have

constructed, and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment);

NOW, THEREFORE, in consideration of the foregoing, the Manufacturer and the Railroad hereby agree as follows:

ARTICLE 1. Construction and Sale.

Pursuant to this Agreement, the Manufacturer will arrange to have the Equipment constructed at the plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component

parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted by the Manufacturer as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2.

Article 2 of the Original Conditional Sale Agreement is herein incorporated as Article 2 hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provision had been set forth in full in this instrument.

ARTICLE 3.

Article 3 of the Original Conditional Sale Agreement is herein incorporated as Article 3 hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provision had been set forth in full in this instrument, except that the fifth paragraph of Article 3 hereof shall read as follows:

"The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date, but in no event later than June 1, 1972."

ARTICLES 4 THROUGH 9.

Articles 4 through 9, inclusive, of the Original Conditional Sale Agreement are herein incorporated as Articles 4 through 9, inclusive, hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provisions had been set forth in full in this instrument, except that the amount "\$100,000" appearing in the first paragraph of Article 7 of the Original Conditional Sale Agreement shall be changed herein to the amount "\$15,000."

ARTICLE 10.

On or before April 30 in each year, commencing with the year 1972, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a

Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLES 11 THROUGH 15.

Articles 11 through 15, inclusive, of the Original Conditional Sale Agreement are herein incorporated as Articles 11 through 15, inclusive, hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provisions had been set forth in full in this instrument.

ARTICLE 16. Defaults.

Article 16 of the Original Conditional Sale Agreement is incorporated herein as Article 16 hereof and shall be deemed to be a part of this instrument as fully and to all intents



and purposes as though said provision had been set forth in full in this instrument, except that subparagraph (f) of the first paragraph of Article 16 hereof shall read as follows:

"(f) the Railroad shall fail to comply with its obligations under the Agency Agreement dated as of September 1, 1970, among the Railroad, The First Pennsylvania Banking and Trust Company, as Agent, and the Investors (as defined therein) or there shall occur an event of default (as defined in the Conditional Sale Agreement dated as of September 1, 1970, between General Electric Company and the Railroad or in the Original Conditional Sale Agreement);"

ARTICLES 17 THROUGH 26.

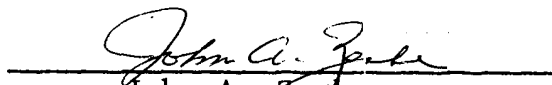
Articles 17 through 26 of the Original Conditional Sale Agreement, inclusive, are herein incorporated as Articles 17 through 26, inclusive, hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provisions had been set forth in full in this instrument.


ARTICLE 27. Execution.

This Agreement, which is dated for convenience as of June 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto attached.

IN WITNESS WHEREOF, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed by its proper officer and its corporate seal to be hereunto affixed and duly attested, all as of the day and year first above written.

 (L.S.)  
Allen R. Bradley

 (L.S.)  
John A. Zerbe

NORFOLK AND WESTERN RAILWAY COMPANY  
By   
Assistant Vice President-Finance

ATTEST:

  
ASSISTANT Secretary

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
 COUNTY OF PHILADELPHIA )

On this 4th day of June, 1971, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

\_\_\_\_\_  
 Notary Public

JUDITH Z. POTE  
 Notary Public, Philadelphia, Philadelphia Co  
 My Commission Expires January 28, 1974

COMMONWEALTH OF VIRGINIA )  
 ) ss.:  
 CITY OF ROANOKE )

On this 18th day of June, 1971, before me personally appeared C. B. Deibel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President - Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Betty S. Whitley  
 Notary Public

*My commission expires 8/29/71*

SCHEDULE BMESSRS. ALLEN R. BRADLEY AND JOHN A. ZERBE

<u>Type</u>	<u>Specifications</u>	<u>Symbol</u>
100-ton hopper cars with 3,420 cubic foot capacity (Railroad Class H-11e)	Railroad's General Arrangement Drawing No. J-50962	HT

<u>Plant</u>	<u>Quantity</u>	<u>Railroad's Road Numbers (both inclusive)</u>
Railroad's Shops at Roanoke, Virginia	6	120000-120005

<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
\$12,700	\$76,200	At Roanoke, Virginia in June 1971.

ADDITIONAL AGREEMENT AND ASSIGNMENT dated as of June 1, 1971 (hereinafter called this Assignment) between ALLEN R. BRADLEY and JOHN A. ZERBE (hereinafter collectively called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an agency agreement dated as of September 1, 1970 (hereinafter called the Agency Agreement).

WHEREAS, the Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a conditional sale agreement dated as of September 1, 1970 (hereinafter called the Original Conditional Sale Agreement), providing for the construction and the sale and delivery by the Manufacturer to the Railroad, and purchase by the Railroad from the Manufacturer, of the railroad equipment described in Schedule B thereof (hereinafter called the Delivered Equipment);

WHEREAS, the Manufacturer and the Agent are parties to an agreement and assignment dated as of September 1, 1970 (hereinafter called the Original Agreement and Assignment),

pursuant to which the Manufacturer assigned to the Agent certain rights under the Original Conditional Sale Agreement and its right, title and interest in and to the Delivered Equipment;

WHEREAS, pursuant to the Agency Agreement, the Agent is authorized to enter into an additional conditional sale agreement substantially similar to the Original Conditional Sale Agreement in order to provide for the acquisition by the Railroad from a person or persons other than the Railroad of additional railroad equipment of similar character to the Delivered Equipment, first put into service no earlier than September 1, 1970;

WHEREAS, the Manufacturer and the Railroad have entered into an additional conditional sale agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), providing for the construction of the railroad equipment described in Schedule B to the Conditional Sale Agreement, and for the sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of such railroad equipment (such railroad equipment, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and

Article 7 of the Conditional Sale Agreement, respectively, being hereinafter called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1.00 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent to the Manufacturer of the amounts required to be paid under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to have the Equipment constructed and to deliver the same, the right to receive the payments specified in the third paragraph of Article

2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of



the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Articles 1 and 2 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15, and under subparagraphs (a) and (b) of the third paragraph of Article 3, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and

other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

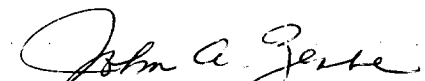
If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to such unit, including any right, title and interest under the Conditional Sale Agreement with respect to such unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTIONS 2 THROUGH 8. Sections 2 through 8 of the Original Agreement and Assignment, inclusive, are herein incorporated as Sections 2 through 8, inclusive, hereof and shall be deemed to be a part of this instrument as fully and to all intents and purposes as though said provisions had been set forth in full in this instrument.

SECTION 9. This Agreement, which is dated for convenience as of June 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The Agent agrees to deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Agent has caused this instrument to be signed by its proper officer and its corporate seal to be hereunto affixed and duly attested, all as of the day and year first above written.

 (L.S.)  
Allen R. Bradley

 (L.S.)  
John A. Zerbe

THE FIRST PENNSYLVANIA BANKING AND  
TRUST COMPANY, as Agent

By  Vice President

ATTEST:

  
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
 COUNTY OF PHILADELPHIA )

On this 4th day of June, 1971, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

---

Notary Public

JUDITH Z. POTE  
 Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires January 28, 1974

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.:  
 COUNTY OF PHILADELPHIA )

On this 4th day of June, 1971, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that the seal affixed to the foregoing instrument is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

---

Notary Public

JUDITH Z. POTE  
 Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires January 28, 1974

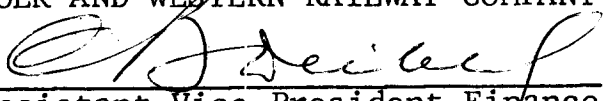
## ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company (hereinafter called the Railroad) hereby acknowledges due notice of the assignment made by the foregoing Additional Agreement and Assignment dated as of June 1, 1971 (hereinafter called the Additional Agreement and Assignment).

The Railroad covenants and agrees that it will warrant to the Agent, at the time of each delivery of its certificate of acceptance with respect to any units of the Equipment (as defined in the Additional Agreement and Assignment) pursuant to subparagraph (b) of the second paragraph of Section 5 of the Additional Agreement and Assignment, that no claims, liens or encumbrances of any nature attached to such units, except only as are contemplated in said Additional Agreement and Assignment or in the Conditional Sale Agreement (as defined in the Additional Agreement and Assignment) and the Agency Agreement both referred to therein, between the time of the delivery of such units to the Railroad by the Manufacturer referred to in the Additional Agreement and Assignment and the Closing Date (as defined in the Additional Agreement and Assignment) in respect of such units.

NORFOLK AND WESTERN RAILWAY COMPANY

By

  
Assistant Vice President-Finance

COMMONWEALTH OF VIRGINIA )  
 ) ss.:  
CITY OF ROANOKE )

On this 1<sup>st</sup> day of June, 1971, before me personally appeared C. B. Deibel, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President - Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Betty S Whitley  
Notary Public

My commission expires 8/29/71.